THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.27519 OF 2005

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ORAL ORDER:

The petitioners herein are holding licenses to sell Indian Liquor and Foreign Liquor under the provisions of A.P. Excise (Lease of Right of Selling by Shop and Licence Conditions) Rules, 2005 (for short "the Rules") in pursuance of the leases granted in respect of two shops situated in Ward No.10 of Tirupati Municipality. The 5th respondent is also a licensee in respect of shop No.7 in Ward No.14. In the licence granted to the 5th respondent the licensed premises has been shown as Door No.14-3-301/A, D.R. Mahal Road, Tirupati. However, subsequently the 5th respondent made an application to the 6th respondent - Prohibition & Excise Superintendent, Tirupati, to permit him to shift the licensed premises from Door No.14-3-301/A, D.R. Mahal Road to Door No.12-3-312, Tilak Road, Tirupati. The said request was rejected by the 6th respondent on the ground that the shop was exclusively notified for the area/locality of Ward No.14 of Tirupati Municipality, whereas the proposed premises at Door No.12-3-312, Tilak Road is in 12th Ward, and therefore, he cannot be permitted to shift the shop. It was also observed that the enquiry of the Assistant Commissioner of Prohibition & Excise, Tirupati revealed that the primary Municipal Elementary School is existing at a distance of 90 meters from the proposed premises, and therefore, it attracts the restrictions laid down under Rule 27 of the Rules.

However, a fresh order has been passed by the 6th respondent on 17.12.2005 permitting the 5th respondent to shift the licensed premises from the existing premises at Door No.14-3-301/A, D.R. Mahal Road to the premises situated at Door No.12-3-312, Sannapu Street, Tirupati. The said order is under challenge in this writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioners vehemently contends that Door No.12-3-312,

Sannapu Street, Tirupati is situated in Ward No.12, and therefore, shifting is not permissible under the provisions of the Rules.

However, the learned counsel for the 5th respondent while placing reliance upon a Certificate issued by the Commissioner of Tirupati Municipality dated 16th November, 2005 vehemently contended that it is not correct to say that the proposed premises is situated in Ward No.12.

It is true that under Rule 29 (3) of the Rules, shifting of the licensed premises is permissible only within the same area/locality where it was originally established. Thus shifting of the shop of the 5th respondent from Ward No.14 to a different Ward cannot be permitted.

Hence, the question that requires consideration is whether the proposed premises i.e., 12-3-312, Sannapu Street, Tirupati, is situated in Ward No.14 or Ward No.12.

Obviously, there is a dispute with regard to the location of the proposed premises. Though in view of the order passed by the Prohibition and Excise Superintendent, Tirupati dated 14.11.2005, *prima facie* it appears that the proposed premises is situated in a different Ward, such a pure disputed question of fact cannot be decided by this Court while exercising the jurisdiction under Article 226 of the Constitution of India. Hence, I am not inclined to express any opinion on the said issue. Since the 6th respondent licensing authority appears to have passed two conflicting orders, I deem it appropriate to direct the 1st respondent-Commissioner of Prohibition & Excise to conduct necessary enquiry into the whole issue after affording due opportunity to the petitioners as well as the 5th respondent to put forth their versions and pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of two weeks from the date of receipt of this Order. Till such time, the impugned order dated 17.12.2005 shall not be given effect to.

The Writ Petition is accordingly disposed of. No costs.

(G. ROHINI, J.)

17th February, 2006.

Kgr

Issue CC in one week.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.27519 OF 2005

17th February, 2006.

Between:

M/s Ashok Wines, a proprietary concern
a D.No.425A, Tilak Road, represented by
is proprietor P. Ashok Kumar Reddy and
Another. .. Petitioners.

And

Government of A.P. represented by its

Commisioner, Prohibition & Excise, A.P.,

Hyderabad and five others. .. Respondents.